

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLINTON CAPITAL CORPORATION,

Plaintiff,

-against-

257 WEST 21ST STREET ASSOCIATES,
INC., et al.,

Defendants.

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/27/21

16-MC-353 (LAK) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

Clinton Capital Corporation (Clinton), as judgment creditor, filed this action on October 4, 2016, pursuant to Fed. R. Civ. P. 69(a), to obtain discovery in aid of its efforts to collect on a judgment that it obtained in this Court more than 25 years ago, on June 27, 1995, and recorded on June 30, 1995, against 257 West 21st Street Associates, Inc., 257 West 21st Street Equities, Inc., and Christopher McNeur, in the amount of \$382,612.42. (Dkt. No. 66-11.)

The proceedings in this Court since 2016 have consisted primarily of motions to compel compliance with, or sanction noncompliance with, numerous nonparty subpoenas served by Clinton upon persons and entities that are associated with McNeur and that Clinton suspects of holding or hiding assets belonging to McNeur.

On December 3, 2021 – while a motion was pending by Clinton's attorneys to withdraw as counsel in this action – defendant McNeur filed a "cross-motion" to dismiss the case pursuant to 28 U.S.C. sec. 1367(c)(2) and (4) (Dkt. No. 100). McNeur argues, among other things, that plaintiff Clinton is an inactive corporation and has been since August 26, 2019. (Dkt. No. 101 ¶ 5.)

On December 8, 2021, I stayed briefing on the motion to dismiss until 30 days after a ruling on the withdrawal motion. (Dkt. No. 104.)

On December 16, 2021, I granted with withdrawal motion in part and directed withdrawing counsel to serve my Order on Clinton. (Dkt. No. 106.) On December 20, 2021, withdrawing counsel filed their Certificate of Service, reflecting service by mail and email on the same individual identified in previous filings as Clinton's "authorized representative." (Dkt. No. 107.)

On December 21, 2021, McNeur filed a letter (Dkt. No. 108), again arguing that because Clinton "has been inactive since August 26, 2019," it "does not exist and this court lacks jurisdiction on this matter and only the parties, and therefore pursuant to 28 U.S.C. sec. 1367 this court lacks jurisdiction over the current applicant."

The Court construes McNeur's December 21, 2021 letter as an unauthorized supplemental brief in support of its pending motion to dismiss, and further notes that it was filed days after Clinton's counsel were granted leave to withdraw, leaving Clinton unable to respond until new counsel appear on its behalf.

The December 21, 2021 letter (Dkt. No. 108) is stricken from the record. McNeur will have a reply opportunity if and when Clinton responds to its motion to dismiss.

Dated: New York, New York
December 27, 2021

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge